

FILED
U.S. DIST. COURT
BRUNSWICK DIV.

AUG 29 11 30 AM '94

S. Jaylor
S. U. S. A. GA

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

UNITED STATES OF AMERICA

*

vs.

*

Case No. CR294-40

TYRONE D. SALAZAR

*

Defendant

*

MOTION TO DISMISS

NOW COMES Defendant in the above styled action, and moves this Honorable Court for an order dismissing any and all charges against Defendant in the above styled accusation and shows the Court as follows:

(1) Because Defendant's constitutional rights (a) against self-incrimination, (b) to equal protection, (c) against warrantless arrest without proper probable cause for detention, and (d) to due process of law under the United States Constitution and the Georgia Constitution have been violated, the Defendant respectfully requests that all charges brought against him by the State be dismissed by this court.

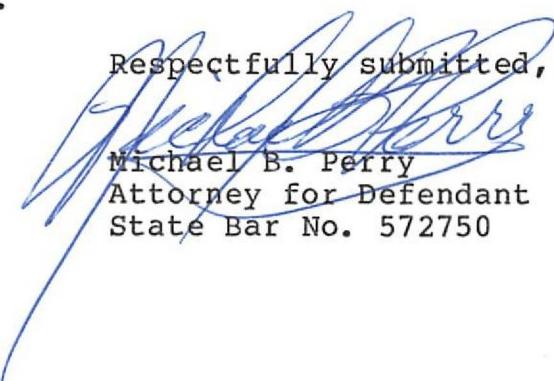
(2) Because Defendant was improperly required to perform field sobriety tests and improperly required to submit to Alco-Sensor test without first being advised that he had a choice as to whether or not to submit to these non-mandatory tests, all subsequent evidence based upon the "fruits of the poisonous tree" must be suppressed. Without these screening tests, the arresting officer could not have developed sufficient facts to constitute probable cause for arrest of the Defendant.

(3) The arresting officer made materially misleading statements to Defendant regarding the state's chemical test. Due to such inappropriate actions by the State's agent, the charges against Defendant should be dismissed. Without evidence of Defendant's refusal to take the test, there is insufficient evidence of impairment or intoxication to support a conviction for drunk driving.

WHEREFORE, the Defendant prays for dismissal of all charges against him based on each and every one of the foregoing grounds, and respectfully requests that this Honorable Court consider each numbered ground as a separate and distinct request for dismissal.

Dated: August 8, 1994.

Respectfully submitted,


Michael B. Perry
Attorney for Defendant
State Bar No. 572750

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